

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Jennifer Myers,

Case No. 22-cv-2528 PAM/ECW

Plaintiff,

v.

REPORT AND RECOMMENDATION

United HealthCare Services, Inc.,

Defendant.

This case is before the Court regarding the Order issued on January 9, 2024 by the undersigned magistrate judge (Dkt. 3) ordering that Plaintiff do one of the following or the Court would recommend dismissal for failure to prosecute:

1. File proof of service of the summons and complaint or a waiver of service on CM/ECF;
2. Immediately notify counsel for Defendant United HealthCare Services, Inc. that he/she is required to make an appearance or move for an extension of time to do so;
3. File an application for entry of default unless the required pleading or request for extension was filed within 10 days of the date of the January 9, 2024 Order; or
4. Advise the Court in writing of any good cause to the contrary.

(See Dkt. 3 at 1-2.)

The present case was initiated on October 12, 2022. (Dkt. 1.) Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, “[i]f a defendant is not served within 90

days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant. . . .” Fed. R. Civ. P. 4(m). As of the date of this Order, Plaintiff has done none of the items listed above in the Court’s previous January 9, 2024 Order, including providing proof of service. The Eighth Circuit has approved of sua sponte dismissal for failure to serve a defendant, so long as the dismissal is without prejudice. *See* Fed. R. Civ. P. 41(b); *see also Hoffmann v. United States*, 21 F. App’x 528, 529 (8th Cir. 2001) (per curiam) (holding that plaintiff’s failure to serve the defendant for over 120 days since filing the complaint warranted a sua sponte dismissal without prejudice under Rule 4(m)); *Sterling v. United States*, 985 F.2d 411, 412 (8th Cir. 1993) (citations omitted) (“District courts have inherent power to dismiss sua sponte a case for failure to prosecute, and we review the exercise of this power for abuse of discretion.”). Accordingly, the Court recommends dismissal of this case due to Plaintiff’s failure to prosecute her claims.

RECOMMENDATION

Based on the files, records, and proceedings herein, **IT IS RECOMMENDED THAT:** Plaintiff’s Complaint be **DISMISSED WITHOUT PREJUDICE** for failure to prosecute.

DATED: March 25, 2024

s/Elizabeth Cowan Wright
ELIZABETH COWAN WRIGHT
United States Magistrate Judge

NOTICE

This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under District of Minnesota Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. D. Minn. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set for in D. Minn. LR 72.2(c).